



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

January 26, 2006

The Honorable David P. Currier, Chairman
Resources, Recreation, and Development Committee
Room 305, LOB
Concord, NH 03301

RE: House Bill 1493, Declaring Groundwater is Part of the Public Trust

Dear Representative Currier:

Thank you for the opportunity to comment on HB 1493. This bill would amend the Statement of Purpose in the Groundwater Protection Act, RSA 485-C, by declaring that groundwater is part of the public trust and that "the groundwater underlying the state of New Hampshire is held in trust by the state for the benefit of the general public". The Department supports this bill because we believe that the inclusion of this language is consistent with the law and supports current practices.

The Declaration of Policy in RSA 481:1 already identifies water beneath the ground as being a public trust resource that should be protected for current and future generations. The specific language found in 481:1 is:

481:1 Declaration of Policy. – The general court finds that an adequate supply of water is indispensable to the health, welfare and safety of the people of the state and is essential to the balance of the natural environment of the state. Further, the water resources of the state are subject to an ever-increasing demand for new and competing uses. The general court declares and determines that the water of New Hampshire whether located above or below ground constitutes a limited and, therefore, precious and invaluable public resource which should be protected, conserved and managed in the interest of present and future generations. The state as trustee of this resource for the public benefit declares that it has the authority and responsibility to provide careful stewardship over all the waters lying within its boundaries. The maximum public benefit shall be sought, including the assurance of health and safety, the enhancement of ecological and aesthetic values, and the overall economic, recreational and social well-being of the people of the state...

The Title of RSA 481 is STATE DAMS, RESERVOIRS AND OTHER WATER CONSERVATION PROJECTS. The inclusion of the language proposed by HB 1493, which clearly identifies groundwater as part of the public trust in the section of the statutes that deals specifically with groundwater, namely the GROUNDWATER PROTECTION ACT (RSA 485-C), strengthens and clarifies the general court's intent that groundwater should be part of the public trust.

In 1998, RSA 485-C and RSA 485 were amended to require that new large groundwater withdrawals obtain a permit from DES. The 1998 law required DES to adopt regulations for permitting new large groundwater withdrawals that ensure these withdrawals are operated efficiently and do not adversely impact other water users or water resources. In subsequent rulemaking and all the permitting to date, the Department has acted to preserve the public trust by defining how surrounding water resources and users were to be protected and by issuing permits which ensured this protection. This activity is consistent with the state having responsibility for the protection of groundwater under the public trust.

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In summary, we believe that current practices and statutory law already presume that groundwater is included in the State's public trust responsibilities. We believe that HB 1493 will serve to further clarify and support that groundwater is part of the public trust by including this declaration in the Statement of Purpose section of the Groundwater Protection Act.

Thank you again for the opportunity to comment on this legislation. If you have any questions or need additional information, please do not hesitate to call Sarah Pillsbury at 271-1168 or me at 271-3449.

Sincerely,


Michael P. Nolin
Commissioner

cc: Representative Spand
Representative Cilley
Representative Phinizy
Representative Powers
Senator Green
Senator Burling
Senator Johnson
Senator Larson
Senator Fuller Clark